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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2010-197

**JOHN AARON JOHNSTON
605 Calderwood Ct
Pensacola, FL 32534**

ORDER

Registered Nurse License No. 670931

IT IS SO ORDERED that Registered Nurse License No. 670931, heretofore issued to Respondent John Aaron Johnston, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 6, 2010

It is so ORDERED January 6, 2010



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2010-197

**JOHN AARON JOHNSTON
605 Calderwood Ct
Pensacola, FL 32534**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Registered Nurse License No. 670931

FINDINGS OF FACT

1. On or about September 28, 2009, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2010-197 against John Aaron Johnston (Respondent) before the Board of Registered Nursing.

2. On or about December 20, 2005, the Board of Registered Nursing (Board) issued Registered Nurse License No. 670931 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on December 31, 2007 and has not been renewed.

3. On or about October 8, 2009, Kami Pratab, an employee of the Board of Registered Nursing, Department of Consumer Affairs, served by Certified and First Class Mail a copy of the Accusation No. 2010-197, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 605 Calderwood Ct, Pensacola, FL

A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

On or about November 3, 2009, the Certified Mail documents were returned and marked by the U.S. Postal Service, "Unclaimed."

1 5. Business and Professions Code section 2764 states:

2 The lapsing or suspension of a license by operation of law or by order or decision of
3 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
4 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
5 against such license, or to render a decision suspending or revoking such license.

6 6. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
8 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
9 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
10 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

11 Respondent failed to file a Notice of Defense within 15 days after service upon her of the
12 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2010-
13 197.

14 7. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
16 agency may take action based upon the respondent's express admissions or upon other evidence
17 and affidavits may be used as evidence without any notice to respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 evidence on file herein, finds that the allegations in Accusation No. 2010-197 are true.

21 9. The total costs for investigation and enforcement in connection with the Accusation
22 are \$407.00 as of November 10, 2009.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent John Aaron Johnston has
3 subjected his Registered Nurse License No. 670931, to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Board of Registered Nursing is authorized to revoke Respondent's Registered
7 Nurse License based upon the following violations alleged in the Accusation:

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9 a. Violation of 2761(a)(4) - Disciplinary action by another State Board of Nursing.

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27 Attachment:

28 Exhibit A: Accusation No. 2010-197

Exhibit A

Accusation No. 2010-197

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JANICE K. LACHMAN, State Bar No. 186131
Supervising Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7384
Facsimile: (916) 327-8643

7 Attorneys for Complainant
8

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

14 **JOHN AARON JOHNSTON**
605 Calderwood Ct.
15 Pensacola, Florida 32534

16 Registered Nurse License No. 670931

17 Respondent.
18

Case No. 2010-197

A C C U S A T I O N

19 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:
20

PARTIES

21 1. Complainant brings this Accusation solely in her official capacity as the Interim
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
23 Affairs.

24 2. On or about December 20, 2005, the Board issued Registered Nurse License
25 Number 670931 to John Aaron Johnston ("Respondent"). The license expired on
26 December 31, 2007, and has not been renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code section ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Code section 2811(b), provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 8. Respondent is subject to discipline under Code section 2761(a)(4), in that on or
4 about July 3, 2008, in a case entitled *In Re: Emergency Suspension of License of John Aaron*
5 *Johnston, R.N., License No. RN 9213310, Case No. 2008-09796*, the State of Florida,
6 Department of Health, entered an Order immediately suspending Respondent's registered nursing
7 license based on his diversion of narcotics from his employer and his testing positive for
8 narcotics without a prescription, as more particularly set forth in the Order of Emergency
9 Suspension of License, attached hereto as **Exhibit A**.

10 9. On or about July 22, 2008, State of Florida, Department of Health, filed an
11 Administrative Complaint, attached hereto as **Exhibit B**.

12 10. On or about September 11, 2008, the State of Florida, Department of Health, filed
13 a Motion for Final Order After Hearing Not Involving Disputed Issues of Material Facts, attached
14 hereto as **Exhibit C**.

15 11. On or about December 22, 2008, the Final Order reprimanding and suspending
16 Respondent's registered nursing license became effective. The license shall remain suspended
17 until such time that he enters into the Intervention Project for Nurses (IPN) and complies with
18 any and all terms and conditions imposed by IPN. The Final Order is attached hereto as
19 **Exhibit D**.

20 PRAYER

21 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 670931, issued to
24 John Aaron Johnston;

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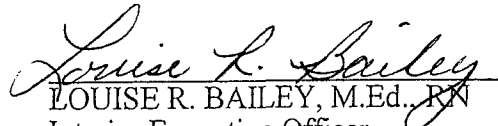
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1 2. Ordering John Aaron Johnston to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Code
3 section 125.3; and,

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 9/28/09

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7 
8 LOUISE R. BAILEY, M.Ed., RN
9 Interim Executive Officer
10 Board of Registered Nursing
11 Department of Consumer Affairs
12 State of California
13 Complainant
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13 Accusation (kdg) 9/14/09

EXHIBIT A

**Emergency Suspension of License of John Aaron Johnston,
R.N. 9213310, Case No. 2008-09796**

3. On or about January 20, 2006, Mr. Johnston was hired as a registered nurse by Critical Difference, Inc ("CDI"), a nurse staffing agency. While working at CDI, Mr. Johnston was frequently assigned to Fort Walton Beach Medical Center ("FWBMC") and Gulf Breeze Hospital ("GBH"), a part of the Baptist Healthcare group.

4. On or about August 2, 2008, at or about 7:00 p.m., until on or about August 3, 2008, at or about 7:00 a.m., Mr. Johnston was assigned to work as a registered nurse at FWBMC and cared for patient M.J., who had an order to receive morphine 4 milligram ("mg") injections every two hours if needed for pain. While caring for M.J., Mr. Johnston documented administering morphine 4 mg every two hours during his shift.

5. On or about August 3, 2007, after Mr. Johnston completed his shift, M.J. complained he had a bad night and reported that he did not receive relief when given pain medication by a male nurse. Concerned that M.J. did not actually receive morphine that had been documented as given, supervisors at FWBMC ordered the nurses who cared for M.J. to submit to a drug test. Mr. Johnston was also requested to return to the facility to submit to a drug test. Mr. Johnston did not return to FWBMC for testing. All other nurses who were tested had negative results.

6. On or about August 3, 2007, Mr. Johnston applied for a permanent nursing position at GBH. On that date, Mr. Johnston submitted to a pre-employment drug test in conjunction with his application for employment. Mr. Johnston provided a urine specimen for the test. The collector sealed the specimen, prepared a chain of

custody form, and sent the sample to Quest Diagnostics ("Quest") located in Atlanta, Georgia.

7. On or about August 4, 2007, Quest received Mr. Johnston's specimen.

8. On or about August 4, 2007, Quest scientists screened Mr. Johnston's specimen for drugs using the immunoassay method.

9. Immunoassay is a drug testing method used for determining the presence of drugs in human biological fluids such as urine. Immunoassay measures the presence of drugs by adding to the specimen specific antibodies that bind with the drug being measured. If molecules of the drug being tested for are present, the drug molecules bind to the antibodies, enabling the scientist to detect the presence of the drug in the specimen.

10. The immunoassay test revealed that Mr. Johnston's urine specimen was positive for opiates.

11. Opiate, or opioid, drugs have similar actions as the drug opium and are typically prescribed to treat pain. Opioid drugs are synthetically manufactured, while opiate drugs are naturally occurring, but the terms opioid and opiate are often used interchangeably. Opiate drugs are addictive and subject to abuse. Morphine is an opiate drug.

12. On or about August 4, 2007, Quest scientists conducted a confirmation test on Mr. Johnston's urine specimen using gas chromatography/mass spectrometry ("GC/MS").

13. GC/MS is a drug testing method that is different in scientific principle than immunoassay. A special instrument, the gas chromatographer, utilizes the chemical properties of chemical compounds in order to separate the compounds that are present in a urine specimen. After separating the compounds in the urine specimen, another instrument, the mass spectrometer is used to identify each chemical compound, based on the compound's chemical structure and mass.

14. The GC/MS test revealed that Mr. Johnston's urine specimen was positive for morphine.

15. Morphine is an opiate class controlled substance prescribed to treat moderate to severe pain. According to Section 893.03(2), Florida Statutes, morphine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of morphine may lead to severe psychological or physical dependence.

16. By on or about August 5, 2007, Mr. Johnston had not reported to FWBMC to submit to a drug test. As a result, FWBMC designated Mr. Johnston as "Do Not Use and Not for Rehire," and communicated to CDI that Mr. Johnston should no longer be assigned to their facility.

17. On or about August 7, 2007, GBH received the report indicating that Mr. Johnston had tested positive for morphine. The supervisor at GBH notified Mr. Johnston and advised him to contact the Intervention Project for Nurses ("IPN").

18. IPN is the impaired practitioner program for the Board of Nursing, pursuant to Section 456.076, Florida Statutes. IPN is a program that monitors the

evaluation, care and treatment of impaired nurses. IPN oversees random drug screens and provides for the exchange of information between treatment providers, evaluators and the Department for the protection of the public.

19. On or about August 8, 2007, Mr. Johnston contacted IPN and reported that he tested positive for morphine. Mr. Johnston stated that he worked for CDI for the past year and a half and had primarily been assigned to work at FWBMC and GBH. He reported he had been diverting hydromorphone and morphine for his own use from both hospitals for the past six months. He decided to apply for a permanent position at GBH which prompted the drug test.

20. Hydromorphone is an opioid class drug commonly prescribed to treat pain. According to Section 893.03(2), Florida Statutes, hydromorphone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of hydromorphone may lead to severe psychological or physical dependence.

21. Mr. Johnston also reported taking other opioid class medications, some by prescription and some he obtained off the street, including Lortab, Percocet, and methadone. The IPN Case Manager advised Mr. Johnston about the requirements of IPN participation including the requirements to refrain from nursing practice and submit to an IPN-facilitated evaluation.

22. Lortab is the brand name for a drug that contains hydrocodone, an opioid class drug prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in Lortab, is a Schedule III controlled substance

that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

23. Percocet is the brand name for a drug that contains oxycodone, an opioid class drug prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of oxycodone may lead to severe psychological or physical dependence.

24. Methadone is an opioid class drug prescribed to treat pain. According to Section 893.03(2), Florida Statutes, methadone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of methadone may lead to severe psychological or physical dependence.

25. On or about September 7, 2007, the Chief Executive Officer ("CEO") of CDI contacted IPN and reported that Mr. Johnston had resigned from his position after refusing to submit to a drug test while at a nursing assignment at FWBMC. The CEO also reported that a staffing agency in Alabama had contacted them for a reference on Mr. Johnston and wanted IPN to be aware that Mr. Johnston may be seeking nursing employment in Alabama.

26. On or about September 7, 2007, Mr. Johnston spoke to an assistant at IPN and requested permission to wait until late October to schedule his evaluation appointment.

27. On or about September 19, 2007, Mr. Johnston contacted the IPN Case Manager and reported that he was not attempting to secure employment in Alabama and is not licensed there. Mr. Johnston stated that an agency that works out of Alabama had tried to recruit him, but he declined. He reported that he scheduled his evaluation appointment for on or about October 23, 2007, because he would not be able to afford the fee prior to that time.

28. On or about October 23, 2007, Mr. Johnston submitted to an IPN-facilitated evaluation conducted by Jordan C. Iserman, M.D., a specialist in psychiatry and addiction medicine. Mr. Johnston reported he was initially prescribed Lortab and Percocet in about February of 2007 to treat pain from a medical condition. His use of the medications increased to about 20 tablets a day and he began obtaining Lortab and methadone on the street. His last use of an opioid class drug was methadone on the day prior to the evaluation.

29. Dr. Iserman diagnosed Mr. Johnston with opioid dependency and recommended he undergo detoxification of opioid drugs followed by intensive outpatient substance abuse treatment.

30. On or about December 6, 2007, Mr. Johnston reported that he was off all opioid class medications.

31. On or about December 26, 2007, Mr. Johnston began intensive outpatient substance abuse treatment at Pathways Center located in Pensacola, Florida.

32. On or about January 10, 2008, the counselors from Pathways Center provided a treatment update report on Mr. Johnston which indicated that Mr. Johnston tested positive for cocaine on or about January 7, 2008.

33. According to Section 893.03(2), Florida Statutes, cocaine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of cocaine may lead to severe psychological or physical dependence.

34. On or about February 1, 2008, IPN received another treatment update on Mr. Johnston that indicated he tested positive for cocaine again on or about January 16, 2008 and tested positive for opiates on or about January 23, 2008. The counselors at Pathways Center instructed Mr. Johnston that if he tested positive for any more drugs of abuse, it would be recommended that he enter into a higher level of treatment, such as inpatient treatment.

35. On or about February 22, 2008, Mr. Johnston's counselor from Pathways Center contacted IPN and reported that Mr. Johnston was not progressing in treatment. Mr. Johnston provided another positive drug test, this time for cocaine, and they were recommending that Mr. Johnston enter into inpatient treatment. The counselor reported that there was a three month waiting period for a bed at a local inpatient treatment center. The counselor informed Mr. Johnston that he could continue in the

outpatient program until a bed was available, but Mr. Johnston ceased attending the outpatient treatment sessions.

36. On or about February 25, 2008, the IPN Case Manager sent a letter to Mr. Johnston that gave him contact information for several treatment centers where inpatient treatment could be pursued.

37. On or about March 3, 2008, Mr. Johnston contacted the IPN Case Manager and asked how much time he had before he needed to enter inpatient treatment. The Case Manager gave him a deadline of on or about March 17, 2008. When asked why he tested positive for abusing drugs while in outpatient treatment, Mr. Johnston reported he had a lot of problems at home. Mr. Johnston further reported that he was not addicted to anything.

38. On or about March 17, 2008, IPN provided Mr. Johnston with a letter advising him that he would be dismissed from IPN if he did not enter treatment by on or about March 31, 2008.

39. On or about March 31, 2008, Mr. Johnston reported to IPN that he could not afford inpatient treatment and requested that his IPN file be closed.

40. On or about April 1, 2008, Mr. Johnston was dismissed from IPN.

41. Section 464.018(1)(n), Florida Statutes (2007), subjects a licensee to discipline, including suspension, for failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience. Rule 64B9-8.005(2)(k), Florida Administrative Code, defines failing to meet or departing from minimal standards of acceptable and

prevailing nursing practice to include testing positive for any drugs under Chapter 893, Florida Statutes, on any drug screen when the nurse does not have a prescription and legitimate medical reason for using such drug.

42. Mr. Johnston failed to meet the minimal standards of acceptable and prevailing nursing practice by testing positive for morphine, a drug listed under Chapter 893, Florida Statutes, for which he did not have a prescription, that he admitted diverting from hospitals where he provided services as a registered nurse.

43. Section 464.018(1)(i), Florida Statutes (2007), subjects a licensee to discipline, including suspension, for engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in Chapter 893, Florida Statutes, for any other than legitimate, authorized purposes.

44. Mr. Johnston, engaged in the possession of morphine, a drug set forth in Chapter 893, Florida Statutes, which he removed from FWBMC and GBH for his own use. When tested for drug use, Mr. Johnston tested positive for morphine.

45. Section 456.074(3), Florida Statutes (2007), permits the Department to issue an emergency order suspending or restricting the license of any health care practitioner as defined in Section 456.001(4), Florida Statutes, who tests positive for any drug on any government or private-sector pre-employment or employer-ordered confirmed drug test, as defined in Section 112.0455, Florida Statutes, when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug. Section 456.074(3), Florida Statutes, also requires that the practitioner shall be given 48 hours from the time of notification to the practitioner of the confirmed test

result to produce a lawful prescription for the drug before an emergency order is issued.

46. Mr. Johnston tested positive for morphine in pre-employment confirmed drug test. When notified about the positive drug test, Mr. Johnston contacted IPN and admitted that he had been diverting morphine and hydromorphone from the hospitals where he was assigned to work.

47. Section 120.60(6), Florida Statutes, authorizes the Department to suspend a registered nurse's license if the Department finds that the nurse presents an immediate serious danger to the public health, safety, and welfare.

48. Nurses are required to provide competent care in a manner that is safe and effective to patients. This includes dispensing and administering controlled substances, which have a high likelihood for abuse and harm. Due to the gravity of these responsibilities, the potential for abuse of powerful drugs nurses have access to, and vulnerability of the patients nurses care for, nurses must possess good judgment and good moral character in order to perform their jobs. Mr. Johnston's decision to take morphine for his own use from hospitals he was assigned to work at demonstrates such a complete lack of judgment and such a disregard for the laws and regulations that govern a nurses practice, that the safety of Mr. Johnston's patients cannot be assured as long as he continues to practice nursing.

49. Because registered nurses must assess the condition of their patients and make complex decisions regarding patient care, mental fitness and emotional stability are essential traits a registered nurse must possess. Mr. Johnston's diagnosed opioid

dependence, his continued use of opioid drugs and cocaine while in intensive outpatient treatment, his failure to complete that treatment, and his failure to enter into inpatient treatment demonstrate that Mr. Johnston does not possess the mental fitness and emotional stability necessary to practice nursing safely.

50. Mr. Johnston's lack of good judgment, his disregard of the laws and regulations governing the practice of nursing, and his lack of mental fitness and emotional stability represent a significant likelihood that Mr. Johnston will cause harm to patients. This probability constitutes an immediate serious danger to the health, safety, and welfare of the citizens of the State of Florida. Nothing short of the immediate suspension of Mr. Johnston's license will ensure the protection of the public from this danger.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The Department of Health has jurisdiction over this matter pursuant to Sections 20.43, 456.073, and 456.074(3), Florida Statutes, and Chapter 464, Florida Statutes.

2. Mr. Johnston has violated Section 464.018(1)(n), Florida Statutes (2007), by failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience, as defined by Rule 64B9-8.005(2)(k), Florida Administrative Code, to include testing positive for any drugs under Chapter 893, Florida Statutes, on any drug

screen when the nurse does not have a prescription and legitimate medical reason for using the drug.

3. Mr. Johnston has violated Section 464.018(1)(i), Florida Statutes (2007), by engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in Chapter 893, Florida Statutes, for any other than legitimate purposes authorized by Chapter 464, Florida Statutes.

4. The Department has the authority to suspend Mr. Johnston's license to practice as a registered nurse pursuant to Section 456.074(3), Florida Statutes (2007).

5. Mr. Johnston's continued practice as a registered nurse constitutes an immediate serious danger to the health, safety, and welfare of the public, and this summary procedure is fair under the circumstances to adequately protect the public.

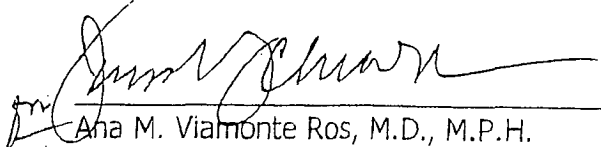
WHEREFORE, in accordance with Sections 120.60(6) and 456.074(3), Florida Statutes, it is

ORDERED THAT:

1. The license of John Aaron Johnston, license number RN 9213310, is immediately suspended.

2. A proceeding seeking formal suspension or discipline of the license of John Aaron Johnston, R.N., to practice as a registered nurse will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes.

DONE and ORDERED this 3RD day of July, 2008.


Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

PREPARED BY:
Kathy Gatzlaff F/B/N 0494461
Consultant Attorney
DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
(850) 245-4640 – Telephone
(850) 245-4683 – Telefax

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.68, Florida Statutes, this Order shall be judicially reviewable. Pursuant to Sections 120.06(6) and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the Department of Health and a second copy of the Petition accompanied by a filing fee prescribed by law with the District Court of Appeal within 30 days of the date this Order is filed.

EXHIBIT B
Administrative Complaint

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2008-09796

JOHN AARON JOHNSTON, R.N.,

RESPONDENT.

JUL 22 2008

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, John Aaron Johnston, R.N., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed registered nurse (R.N.) within the state of Florida, having been issued license number RN 9213310.

3. Respondent's address of record is 605 Calderwood Court, Pensacola, Florida 32534

4. On or about January 20, 2006, Mr. Johnston was hired as a registered nurse by Critical Difference, Inc ("CDI"), a nurse staffing agency. While working at CDI, Mr. Johnston was frequently assigned to Fort Walton Beach Medical Center ("FWBMC") and Gulf Breeze Hospital ("GBH"), a part of the Baptist Healthcare group.

5. On or about August 2, 2008, at or about 7:00 p.m., until on or about August 3, 2008, at or about 7:00 a.m., Mr. Johnston was assigned to work as a registered nurse at FWBMC and cared for patient M.J., who had an order to receive morphine 4 milligram ("mg") injections every two hours if needed for pain. While caring for M.J., Mr. Johnston documented administering morphine 4 mg every two hours during his shift.

6. On or about August 3, 2007, after Mr. Johnston completed his shift, M.J. complained he had a bad night and reported that he did not receive relief when given pain medication by a male nurse. Concerned that M.J. did not actually receive morphine that had been documented as given, supervisors at FWBMC ordered the nurses who cared for M.J. to submit to a drug test. Mr. Johnston was also requested to return to the facility to

submit to a drug test. Mr. Johnston did not return to FWBMC for testing. All other nurses who were tested had negative results.

7. On or about August 3, 2007, Mr. Johnston applied for a permanent nursing position at GBH. On that date, Mr. Johnston submitted to a pre-employment drug test in conjunction with his application for employment. Mr. Johnston provided a urine specimen for the test. The collector sealed the specimen, prepared a chain of custody form, and sent the sample to Quest Diagnostics ("Quest") located in Atlanta, Georgia.

8. On or about August 4, 2007, Quest received Mr. Johnston's specimen.

9. On or about August 4, 2007, Quest scientists screened Mr. Johnston's specimen for drugs of abuse using the immunoassay method.

10. Immunoassay is a drug testing method used for determining the presence of drugs in human biological fluids such as urine. Immunoassay measures the presence of drugs by adding to the specimen specific antibodies that bind with the drug being measured. If molecules of the drug being tested for are present, the drug molecules bind to the antibodies, enabling the scientist to detect the presence of the drug in the specimen.

11. The immunoassay test revealed that Mr. Johnston's urine specimen was positive for opiates.

12. Opiate, or opioid, drugs have similar actions as the drug opium and are typically prescribed to treat pain. Opioid drugs are synthetically manufactured, while opiate drugs are naturally occurring, but the terms opioid and opiate are often used interchangeably. Opiate drugs are addictive and subject to abuse. Morphine is an opiate drug.

13. On or about August 4, 2007, Quest scientists conducted a confirmation test on Mr. Johnston's urine specimen using gas chromatography/mass spectrometry ("GC/MS").

14. GC/MS is a drug testing method that is different in scientific principle than immunoassay. A special instrument, the gas chromatographer, utilizes the chemical properties of chemical compounds in order to separate the compounds that are present in a urine specimen. After separating the compounds in the urine specimen, another instrument, the mass spectrometer is used to identify each chemical compound, based on the compound's chemical structure and mass.

15. The GC/MS test revealed that Mr. Johnston's urine specimen was positive for morphine.

16. Morphine is an opiate class controlled substance prescribed to treat moderate to severe pain. According to Section 893.03(2), Florida Statutes, morphine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of morphine may lead to severe psychological or physical dependence.

17. By on or about August 5, 2007, Mr. Johnston had not reported to FWBMC to submit to a drug test. As a result, FWBMC designated Mr. Johnston as "Do Not Use and Not for Rehire," and communicated to CDI that Mr. Johnston should no longer be assigned to their facility.

18. On or about August 7, 2007, GBH received the report indicating that Mr. Johnston tested positive for morphine. The supervisor at GBH notified Mr. Johnston and advised him to contact the Intervention Project for Nurses ("IPN").

19. IPN is the impaired practitioner program for the Board of Nursing, pursuant to Section 456.076, Florida Statutes. IPN is an independent program that monitors the evaluation, care and treatment of impaired nurses. IPN oversees random drug screens and provides for the

exchange of information between treatment providers, evaluators and the Department for the protection of the public.

20. On or about August 8, 2007, Mr. Johnston contacted IPN and reported that he tested positive for morphine. Mr. Johnston stated that he worked for CDI for the past year and a half and had primarily been assigned to work at FWBMC and GBH. He reported he had been diverting hydromorphone and morphine for his own use from both hospitals for the past six months. He decided to apply for a permanent position at GBH which prompted the drug test.

21. Hydromorphone is an opioid class drug commonly prescribed to treat pain. According to Section 893.03(2), Florida Statutes, hydromorphone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of hydromorphone may lead to severe psychological or physical dependence.

22. Mr. Johnston also reported taking other opioid class medications, some by prescription and some he obtained off the street, including Lortab, Percocet, and methadone. The IPN Case Manager advised Mr. Johnston about the requirements of IPN participation including

the requirements to refrain from nursing practice and submit to an IPN-facilitated evaluation.

23. Lortab is the brand name for a drug that contains hydrocodone, an opioid class drug prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in Lortab, is a Schedule III controlled substance that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

24. Percocet is the brand name for a drug that contains oxycodone, an opioid class drug prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of oxycodone may lead to severe psychological or physical dependence.

25. Methadone is an opioid class drug prescribed to treat pain. According to Section 893.03(2), Florida Statutes, methadone is a Schedule

II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of methadone may lead to severe psychological or physical dependence.

26. On or about September 7, 2007, the Chief Executive Officer ("CEO") of CDI contacted IPN and reported that Mr. Johnston had resigned from his position after refusing to submit to a drug test while at a nursing assignment at FWBMC. The CEO also reported that a staffing agency in Alabama had contacted them for a reference on Mr. Johnston and wanted IPN to be aware that Mr. Johnston may be seeking nursing employment in Alabama.

27. On or about September 7, 2007, Mr. Johnston spoke to an assistant at IPN and requested permission to wait until late October to schedule his evaluation appointment.

28. On or about September 19, 2007, Mr. Johnston contacted the IPN Case Manager and reported that he was not attempting to secure employment in Alabama and is not licensed there. Mr. Johnston stated that an agency that works out of Alabama has tried to recruit him, but he declined. He reported he scheduled his evaluation appointment for on or

about October 23, 2007, because he would not be able to afford the fee prior to that time.

29. On or about October 23, 2007, Mr. Johnston submitted to an IPN-facilitated evaluation conducted by Jordan C. Iserman, M.D., a specialist in psychiatry and addiction medicine. Mr. Johnston reported he was initially prescribed Lortab and Percocet in about February of 2007 to treat pain from a medical condition. His use of the medications increased to about twenty tablets a day and he began obtaining Lortab and methadone on the street. His last use of an opioid class drug was methadone on the day prior to the evaluation.

30. Dr. Iserman diagnosed Mr. Johnston with opioid dependency and recommended he undergo detoxification of opioid drugs followed by intensive outpatient substance abuse treatment.

31. On or about December 6, 2007, Mr. Johnston reported that he was off all opioid class medications.

32. On or about December 26, 2007, Mr. Johnston began intensive outpatient substance abuse treatment at Pathways Center located in Pensacola, Florida.

33. On or about January 10, 2008, the counselors from Pathways Center provided a treatment update report on Mr. Johnston which indicated that Mr. Johnston tested positive for cocaine on or about January 7, 2008.

34. According to Section 893.03(2), Florida Statutes, cocaine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of cocaine may lead to severe psychological or physical dependence.

35. On or about February 1, 2008, IPN received another treatment update on Mr. Johnston that indicated he tested positive for cocaine again on or about January 16, 2008 and tested positive for opiates on or about January 23, 2008. The counselors at Pathways Center instructed Mr. Johnston that if he tested positive for any more drugs of abuse, it would be recommended that he enter into a higher level of treatment, such as inpatient treatment.

36. On or about February 22, 2008, Mr. Johnston's counselor from Pathways Center contacted IPN and reported that Mr. Johnston was not progressing in treatment. Mr. Johnston provided another positive drug test, this time for cocaine, and they were recommending that Mr. Johnston

enter into inpatient treatment. The counselor reported that there was a three month waiting period for a bed at a local inpatient treatment center. The counselor informed Mr. Johnston that he could continue in the outpatient program until a bed was available, but Mr. Johnston ceased attending the outpatient treatment sessions.

37. On or about February 25, 2008, the IPN Case Manager sent a letter to Mr. Johnston that gave him contact information for several treatment centers where inpatient treatment could be pursued.

38. On or about March 3, 2008, Mr. Johnston contacted the IPN Case Manager and asked how much time he had before he needed to enter inpatient treatment. The Case Manager gave him a deadline of on or about March 17, 2008. When asked why he tested positive for drugs of abuse while in outpatient treatment, Mr. Johnston reported he had a lot of problems at home. Mr. Johnston further reported that he was not addicted to anything.

39. On or about March 17, 2008, IPN provided Mr. Johnston with a letter advising him that he would be dismissed from IPN if he did not enter treatment by on or about March 31, 2008.

40. On or about March 31, 2008, Mr. Johnston reported to IPN that he could not afford inpatient treatment and requested that his IPN file be closed.

41. On or about April 1, 2008, Mr. Johnston was dismissed from IPN.

42. Section 456.072(1)(hh), Florida Statutes (2007), provides that being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program constitutes grounds for disciplinary action.

43. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes (2007).

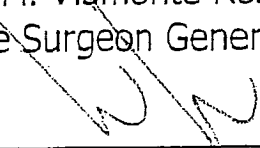
44. On or about April 1, 2008, Respondent was terminated from IPN, which is a treatment program for impaired practitioners as described by Section 456.076, Florida Statutes.

45. Based on the foregoing, Respondent violated Section 456.072(1)(hh), Florida Statutes (2007), being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 17 day of July, 2008.

Ana M. Viamonte Rose, M.D., M.P.H.
State Surgeon General



Walter T. S. Widener
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Racul
DATE 7.22.08

/WW

PCP: 7/21/08
PCP Members: R. RAMOS
R. MUNOZ

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

EXHIBIT C
Motion for Final Order After Hearing
Not Involving Disputed Issues of Material Facts

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Racquel*
DATE: *9.11.08*

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2008-09796

JOHN JOHNSTON, R.N.,

Respondent.

**MOTION FOR FINAL ORDER AFTER HEARING NOT INVOLVING
DISPUTED ISSUES OF MATERIAL FACTS**

COMES NOW, the Petitioner, by and through its undersigned counsel, and moves the Board of Nursing for entry of a Final Order in the above-styled cause on December 5, 2008, at 8:30 a.m. As grounds therefore, the Petitioner would state the following:

1. Petitioner previously filed an Administrative Complaint against Respondent alleging that Respondent had violated the provisions of Florida Statutes, as set forth therein. The Department, by filing the Administrative Complaint, is seeking to discipline the Respondent's license to practice nursing, thereby affecting the Respondent's substantial interests.

2. On or about July 31, 2008, Petitioner served Respondent with the Administrative Complaint via certified mail at 605 Calderwood Court, Pensacola, Florida 32534 Respondent's address of record with the Department of Health. The Department, by serving the Respondent with the Administrative Complaint, provided the Respondent written notice of its decision to seek discipline of the Respondent's license to practice nursing.

3. The Respondent has filed an Election of Rights Form or other responsive pleading evincing, or has otherwise indicated, that Respondent does not dispute the material facts alleged in the Administrative Complaint.

4. There are no disputed issues of material fact to be resolved by the Board.

5. Respondent has been advised, by a copy of this Motion, that a copy of the investigative file in this case shall be furnished to the Board to establish a prima facie case regarding the violations as set forth in the Administrative Complaint.

WHEREFORE, the parties respectfully request the Board of Nursing, after allowing the Respondent the opportunity to present oral and/or written evidence in mitigation of the Administrative Complaint, enter a Final

Order imposing whatever discipline upon the Respondent's license that the Board deems appropriate.

Respectfully submitted,

Walter T. S. Widener

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Prosecution Services Unit
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Tallahassee, FL 32399-3265
(850) 245-4640 telephone
(850) 245-4683 facsimile
Florida Bar No. **0037258**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been provided by U.S. mail this 10th day of September, 2008, to: John Johnston, R.N., 605 Calderwood Court, Pensacola, Florida 32534.

Walter T. S. Widener

Assistant General Counsel

EXHIBIT D
Final Order

STATE OF FLORIDA
BOARD OF NURSING

Final Order No. DOH-08-3063-FO1-MQA

FILED DATE DEC 2 5 2008
Department of HealthBy: [Signature]
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2008-09796

License No.: RN 9213310

JOHN AARON JOHNSTON,

Respondent.

FINAL ORDER

This matter appeared before the Board of Nursing at a duly-noticed public meeting on December 4, 2008 in Kissimmee, Florida, for a hearing not involving disputed issues of material fact pursuant to Respondent's request pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Petitioner was represented by Megan Blanco, Assistant General Counsel, Florida Department of Health. Respondent was present.

FINDINGS OF FACT

Therefore, the Board adopts as its finding of facts the facts set forth in the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the licensee has violated Section 456.072(1)(hh), Florida Statutes.

The Board is empowered by Sections 464.018(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore it is ORDERED that:

The license of JOHN AARON JOHNSTON is hereby REPRIMANDED.

The licensee must pay investigative costs of \$2,381.74 prior to completion of his IPN contract. Payment shall be made to the Board of Nursing and mailed to, DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

The license of JOHN AARON JOHNSTON is suspended and shall remain suspended until such time that he enters into the Intervention Project for Nurses (IPN) and complies with any and all terms and conditions imposed by IPN. At such time the suspension shall be stayed and remain stayed as long as the licensee participates in the IPN. It is the duty of the licensee to contact the IPN at P.O. Box 49130, Jacksonville Beach, Florida 32249-9130, (904) 270-1620 within 30 days from the date of entry of this order. The licensee shall comply with all conditions of the IPN Advocacy Contract or he will be in violation of the Board Order. Violation of the IPN Advocacy Contract shall result in the immediate lifting of the stay of suspension. Reinstatement

will require compliance with all terms and conditions set forth in any previous Board Order, and the licensee's appearance before the Board to demonstrate his present ability to engage in the safe practice of nursing, which shall include a demonstration of two years of documented continuous sobriety. The Board reserves the right to impose reasonable conditions of reinstatement at the time of appearance before the Board.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 22 day of December, 2008.

BOARD OF NURSING



Rick García, MS, RN, CCM
Executive Director for
Vicky Stone-Gale, MSN, ARNP
CHAIR

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the department and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.